

- (2) Is respondent entitled to either a reduction for claimant's preexisting impairment under K.S.A. 1996 Supp. 44-501(c) or to a K.S.A. 44-510a credit?

Respondent raised the following issues in its brief to the Board:

- (1) Did claimant suffer accidental injury on the date alleged?
- (2) If claimant suffered accidental injury on the date alleged, did claimant's accidental injury arise out of and in the course of claimant's employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant alleged accidental injury on December 30, 1996, while performing data entry work for respondent. Claimant began working for respondent on October 1, 1996, and worked without complaint until claimant's vacation began December 23, 1996. Claimant returned from vacation on December 30, 1996, and performed the data entry job for approximately two to four hours when she began experiencing pain and swelling in her right hand and wrist. Claimant also alleges she experienced pain in her left hand. Claimant reported these injuries to respondent and was referred to respondent's emergency room, where she came under the treatment of Dr. V. C. Reddy.

Dr. Reddy diagnosed bilateral carpal tunnel syndrome, severe on the right, and referred claimant to a Dr. Hassan for EMG and nerve conduction studies. Dr. Reddy found claimant to have a positive right side Tinel's and Phalen's test, and a positive Tinel's and decreased pinprick sensation on the left side. Dr. Reddy's report of January 24, 1997, however, indicated that all lab work performed on claimant was essentially unremarkable. In the last entry by Dr. Reddy on February 11, 1997, claimant was diagnosed with persistent bilateral tendinitis of the flexor tendons, with inflammatory reactions of the elbow and wrist. Bilateral carpal tunnel syndrome was not mentioned in Dr. Reddy's last entry.

Claimant was examined by Dr. George Lucas, a board certified orthopedic surgeon, in March 1997 as a referral from Dr. Reddy. Dr. Lucas had previously treated claimant for a 1991 workers' compensation injury involving her upper extremities, including her right elbow. At that time, claimant was diagnosed with ulnar neuritis and medial epicondylitis. She did have complaints of pain and swelling in the ulnar aspect of her right wrist, with some numbness in her middle finger. The complaints to Dr. Lucas in March 1997 included paresthesia, aching, throbbing muscles in her right hand and fingers, and claimant's fingers would draw up when she got cold. Claimant also had reduced strength and power in her

right hand. Claimant also discussed similar symptoms in the left hand, although not as severe.

Dr. Lucas' findings in March 1997 indicated no swelling, no sensory deficits, no focal motor deficit, fair grip strength, and good range of motion in her upper extremities. Claimant's Tinel sign over the medial nerve at the wrist displayed referred pain up to the elbow rather than into the fingers. This was an unusual result. Claimant's Phalen's test caused discomfort but no sensory change, and there was a negative reverse Phalen's test. Claimant's Adson's maneuver was bilaterally negative. Dr. Lucas diagnosed a pain dysfunction syndrome, but assessed claimant no impairment. Dr. Lucas opined that there were no objective physical findings to support claimant's multiple physical complaints. He also stated that claimant could not develop the kind of symptoms that she exhibited on such a sudden basis. He did acknowledge that the physical findings of Dr. Reddy were different than his. In comparing the 1991 injury to the most recent 1996 injury, Dr. Lucas stated that the 1991 injury involved the ulnar nerve, while the 1996 injury involved the median nerve. These are different nerves and involve different injuries. He found no symptoms in claimant's shoulders and did not believe she had any thoracic outlet syndrome.

Claimant was referred to Dr. Lynn D. Ketchum at claimant's attorney's request in May 1997. While Dr. Ketchum's reports are not in evidence, Dr. Edward Prostic was questioned at length about Dr. Ketchum's findings. The parties acknowledged that Dr. Prostic's testimony regarding Dr. Ketchum's reports are appropriately in the record for consideration.

In May 1997, claimant had normal EMG and nerve conduction tests bilaterally. There were negative physical findings during carpal tunnel testing. Dr. Prostic acknowledged, since Dr. Ketchum found no physical evidence of carpal tunnel syndrome when he examined her in May 1997, that would indicate that claimant was "in remission" of her symptoms at that time.

Claimant was referred to Dr. Edward Prostic, an orthopedic surgeon, by her attorney in April 1998. Dr. Prostic assessed claimant a 17.5 percent permanent partial impairment of the right upper extremity and a 10 percent permanent partial impairment of function of the left upper extremity for a combined rating of 15 percent to the body as a whole on a functional basis. He diagnosed bilateral mild carpal tunnel syndrome and bilateral mild thoracic outlet syndrome. When he examined claimant, she had a positive Tinel's sign and a positive Phalen's maneuver at the right wrist. On the left side, claimant was mildly positive in both the Tinel's and Phalen's testing.

Dr. Prostic was provided a history of claimant's work with respondent, including the start date and the fact that claimant did not work between December 23 and December 29, 1996. When told that claimant returned to work on December 30, 1996, and her symptoms became symptomatic within 2 to 4 hours, Dr. Prostic stated that he would not expect a

permanent impairment to occur after only 2 to 4 hours of data entry. Claimant contends that she had symptoms before going on vacation on December 23, 1996, but failed to raise these concerns with anyone or request medical treatment before December 30, 1996.

Dr. Prostic also had the opportunity to review the records of Dr. Jane Drazek from February 1997. Dr. Prostic felt these medical records were entirely consistent with carpal tunnel syndrome. Dr. Prostic also tested claimant for thoracic outlet syndrome and found the test results to be positive. In assessing claimant a functional impairment rating, he included both the bilateral carpal tunnel and thoracic outlet findings in his impairment. Of the 15 percent ratings, 10 percent to each upper extremity was due to the carpal tunnel syndrome, with the remaining impairment being related to the thoracic outlet syndrome.

He acknowledged, when Dr. Ketchum performed the physical examination upon claimant, there was no swelling of the right hand or wrist. The only finding in Dr. Ketchum's records consistent with carpal tunnel syndrome was weakness of grip on one hand. The nerve conduction studies performed at that time were within normal limits. Dr. Prostic went on to explain that carpal tunnel syndrome is a condition that can be more severe on some days than others and it is entirely possible that the symptoms may fluctuate.

The parties also deposed Dr. Ernest Schlachter, who had the opportunity to examine claimant in June 1992 relating to the original injury. Dr. Schlachter originally assessed claimant a functional impairment for an overuse syndrome of both upper extremities and the right shoulder girdle, with entrapment neuropathy of the ulnar nerve at the elbow on the right side. Dr. Schlachter was asked to compare claimant's 1992 symptoms with her current symptoms after looking at Dr. Prostic's examination report and opined that they were the same condition. Dr. Schlachter attempted to explain that the diagnosis of overuse syndrome included a diagnosis of carpal tunnel syndrome. However, Dr. Schlachter did not specifically diagnose or rate claimant with carpal tunnel syndrome in 1992, whereas claimant was diagnosed with carpal tunnel syndrome by Dr. Prostic in 1998.

In proceedings under the Workers Compensation Act, it is claimant's burden to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g). It is the function of the trier of facts to decide which testimony is more accurate and/or credible, and to adjust the medical testimony, along with the testimony of claimant and any other testimony that may be relevant to the question of disability. The trier of facts is not bound by medical evidence presented in the case and has the responsibility of making its own determination. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

A significant dispute exists between the medical opinions of Dr. Lucas and Dr. Prostic. While the Appeals Board acknowledges Dr. Schlachter also testified in this

case, it is difficult to bestow significant credence on Dr. Schlachter's comparison testimony regarding the 1991 and the 1996 injuries.

With regard to whether claimant suffered accidental injury arising out of and in the course of her employment, the Appeals Board finds claimant's testimony to be persuasive. The activity described by claimant is the type of activity which could cause one to suffer carpal tunnel symptoms, even when performed over a short time period. However, the significant dispute in this matter regards whether claimant's condition is temporary or permanent. Dr. Reddy found claimant to have carpal tunnel syndrome in January and February 1997. By the time claimant was examined by Dr. Lucas in March 1997, her symptoms had subsided and Dr. Lucas could only diagnose some type of pain dysfunction syndrome. Dr. Lucas opined that claimant did not have carpal tunnel or thoracic outlet syndrome. He went on to state that claimant had no permanent functional impairment resulting from the brief injury suffered with respondent.

Dr. Prostic, on the other hand, diagnosed claimant with bilateral carpal tunnel syndrome. Dr. Prostic's examination, however, did not occur until almost a year and a half after claimant's alleged injuries. In addition, Dr. Prostic acknowledged that the findings of Dr. Ketchum, approximately one year before his examination, did not bear out that claimant suffered from bilateral carpal tunnel syndrome. In fact, Dr. Ketchum's findings in May 1997, including EMG and nerve conduction studies, as well as a physical examination, were normal. Dr. Prostic acknowledged that, based upon Dr. Ketchum's findings, claimant, if indeed she had carpal tunnel syndrome, would have been in remission at that time.

Dr. Prostic acknowledged that the short duration of the work that led to the onset of symptoms on December 30, 1996, would not lead one to conclude a permanent injury had occurred.

The Appeals Board finds that the opinion of Dr. Lucas is more fully supported by the evidence than that of Dr. Prostic. The short duration of claimant's microtrauma experience, coupled with what appears to be a substantial reduction and almost total elimination of symptoms by March 1997 and confirmed in May 1997, leads the Board to conclude that claimant's condition suffered on December 30, 1996, was a temporary exacerbation of claimant's condition. In so deciding, the Appeals Board affirms the Award of the Administrative Law Judge granting claimant medical benefits and temporary total disability compensation, but no permanent impairment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated September 25, 1998, granting claimant medical benefits and temporary total disability compensation already paid, should be, and is hereby, affirmed.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent and its insurance carrier to be paid as follows:

Ireland Court Reporting, Inc. Transcript of preliminary hearing	\$154.80
Appino & Biggs Reporting Service Discovery Deposition of Laura A. Richardson	\$198.90
Barber & Associates Transcript of regular hearing	\$150.60
Gene Dolginoff Associates, Ltd. Deposition of Edward Prostic, M.D.	\$349.50
Patty L. Morton, CSR Deposition of Ernest R. Schlachter, M.D.	Unknown
Deposition of George L. Lucas, M.D.	Unknown

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
Scott J. Mann, Hutchinson, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director